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THE ADMINISTRATION AND ENFORCEMENT OF STEAMSHIP CONFERENCES AND AGREEMENTS

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"The development of a Conference," says the Report of the Royal Commission on Shipping Rings, "may be tested by the extent to which it endeavors to regulate competition between the lines included and prevent competitive wastage."¹ For example, a conference which has merely an understanding as regards freight rates has not obviously reached so high a stage of development as one which in addition to this divides and restricts the ports of call or number of sailings, pools the earnings, and uses a system of deferred rebates. It follows that the internal mechanism of a conference varies in more or less accordance with the extent to which these various arrangements are carried out.

For the sake of convenience of discussion the writer has deemed it best to divide this paper into two parts, one dealing with passenger agreements and conferences, and the other with freight agreements and conferences.

PASSENGER AGREEMENTS

Outside of the traffic between the United States and Europe but few conferences or agreements exist with regard to the transportation of passengers. Practically all other arrangements for the carriage of passengers are governed by the provisions of freight traffic agreements and cannot be discussed separately therefrom. For the purpose of this paper, therefore, the discussion will be limited to a consideration of the passenger arrangements existing in the traffic between the United States and Europe. There are several of these agreements which, broadly speaking, may be divided into two classes, major and minor. There are three major agreements: Nordantlandischer Dampfer-Linien Verband (commonly called the N. D. L. V.) Passenger Agreement, Agreement A.A., and the Mediterranean Steerage Traffic Agreement. These agreements are very lengthy

¹ *Report of the Royal Commission on Shipping Rings*, pt. I, p. 22.

and go into the greatest detail with reference to administration. The balance of the agreements are minor agreements. These are mere skeletons and are in several cases special contracts between the parties to one or more of the major agreements and some particular line or lines covering some specified portion of the passenger business.²

None of the minor agreements provides for much administrative machinery. Some expressly declare the contract to be subject to all the conditions of the major agreement governing those lines which are parties to the minor agreements.³ Hence the discussion here given must be to all intents and purposes based upon the three major agreements with only occasional references to the minor ones in those few instances where the latter contain administrative provisions. All the major and several of the minor agreements apply to steerage traffic. Two of the minor agreements, however, apply to other classes of traffic, i.e., agreement V to first class, and agreement W to second class.

One of the two main objects of a steamship conference is to regulate competition between the companies.⁴ The two features looking to this end which stand out most clearly in the passenger agreements of the lines are, first, the division of traffic among the lines, and, second, the reservation of special areas. These two features afford a convenient starting point for the discussion of the administrative arrangements of passenger agreements.

Division of Traffic and Enforcement of it Among the Lines.—Steerage and third-class business alone are subject to provisions for traffic division and arrangements necessary for the administration and enforcement of that division.⁵ The discussion in this section, therefore

² Thus Agreement N is between the N. D. L. V. Lines and the Austro-Americana, allotting to the latter a certain portion of the steerage business.

³ Cf. Agreement G, United States of America, v. Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft and others, Petitioner's Exhibits, vol. i, art. 14, p. 93; Special Agreement B. *ibid.*, art. v, p. 114; Special Agreement A, art. iv, p. 118. As all references in the discussion of passenger agreements are taken from the above volume except where otherwise indicated only the Agreement article thereof and page number will be given in the footnotes.

⁴ *Royal Commission on Shipping Rings*, pt. II, p. 9.

⁵ Agreement V of February 5, 1908, relating to first-class business and Agreement W of the same date relating to second-class business of both minimum rate contracts do not divide traffic except in so far as the differential rates given the various lines may do so.

relates only to these classes of business. The steerage traffic of the various steamship lines is distributed among them upon a percentage basis. A certain percentage may be allotted to each line,⁶ or the lines may be divided into groups and a percentage allotted to each group,⁷ or a combination of these two methods may be used, certain lines receiving each a specific percentage and another or other specific percentages being allotted to a group or groups of lines.⁸ Agreement G, regarding third-class passenger business, is of the last type, which is the most prevalent.⁹ In some cases, the percental participation allotted is based upon averages of the passengers carried over a period of years as is the case in the N. D. L. V. Agreement and in Agreements L and G.¹⁰ In certain other cases, the participation allotted is made conditional upon a certain number of sailings per annum as in the Mediterranean Steerage Agreement, Special Agreement B and Agreement N.¹¹

No matter in what way the percentages are distributed, the methods of enforcing the allotments upon the lines are identical in requiring the payment of a compensation price of so much per head for all excess of allotted percentages. This compensation price varies. Under Special Agreement A between the Italian Line and the Transatlantic, American, and White Star Lines, covering Italian and Oriental steerage passengers, it is as low as 75 lire (about \$15).¹² Under Agreement L between the N. D. L. V. Lines and the Transatlantic and American Lines, covering eastbound steerage traffic, the price is even lower, being only 40 marks (about \$10).¹³ On the other hand

⁶ Agreement AA, article iii, pp. 52-53.

⁷ Mediterranean Steerage-Traffic Agreement, pp. 95-96.

⁸ Contract, North Atlantic Steamship Lines Assn. (N. D. L. V.) Passenger Agreement, art. iii, pp. 5-7; Agreement L (eastbound pool), arts. i and iii, pp. 84-87; Special Agreement B (Italian lines, Cunard, and Austro-Americana), art. ii, p. 114; and also p. 113; Special Agreement A (Italian lines, Cie. Gen. Trans-Atlantique, American, and White Star), art. ii, pp. 117-118; Agreement N (N. D. L. V. lines and Austro-Americana), art. i and ii, pp. 121.

⁹ Agreement G (N. D. L. V. lines and Cie. Gen. Trans-Atlantique), arts. ii and iii, pp. 90-91.

¹⁰ N. D. L. V. Agreement, art. iii and commentary pp. 5-6; Agreement L, arts. i and iii, pp. 84-87; Agreement G, art. ii, p. 90.

¹¹ The Mediterranean Steerage Traffic Agreement, art. iii, pp. 96-97; Special Agreement B, art. iii, p. 114; Agreement N, art. ii, p. 120.

¹² Special Agreement A, art. iii, p. 118.

¹³ Agreement L, art. iv, p. 87.

the compensation price is often much greater. It is 100 marks (about \$25) under Agreement N between the N. D. L. V. Lines and the Austro-Americana, covering the steerage business of Trieste and other Adriatic ports.¹⁴ The other agreements fix compensation prices between those mentioned which seem to constitute the lower and upper limits.

By the terms of the three major agreements each line undertakes to arrange its service in such a manner that the number of steeragers which it actually carries corresponds as nearly as possible with the number allotted to it in the agreement.¹⁵ From an administrative point of view the necessity of any such provision may be questioned. The inevitable tendency of the compensation price is to eliminate any attempts to exceed allotted percentages either by a reduction of rates or otherwise.¹⁶ The various lines, therefore, might reasonably be expected to adjust their respective services to their allotments without such a requirement.

Still other administrative rules are provided looking to the enforcement of percentage allotments. The N. D. L. V. Agreement, for example, declares that in case the results show that any of the lines have exceeded their proportions or have remained below them, such lines are entitled and in duty bound to adopt measures¹⁷ calculated to bring about a correct adjustment; but before putting into effect any such measures, each line is obliged to inform the secretary of the arrangements that are about to be adopted.¹⁸ Provisions of a like character are to be found both in Agreement AA and the Mediterranean Steerage Traffic Agreement.¹⁹ In the case of the last mentioned agreement any other action looking to the enforcement of percentage allotments is out of the question until the effect which is produced by the measures adopted appears. If the desired result is not pro-

¹⁴ Agreement N, art. iv, p. 121.

¹⁵ Cf. N. D. L. V. Agreement, art. xv, p. 20; Agreement AA, art. ix, p. 58; Mediterranean Steerage Traffic Agreement, art. viii, p. 99.

¹⁶ Cf. testimony of P. A. S. Franklin, "Proceedings of the Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations," 1913, pp. 582, ff.

¹⁷ Such measures are usually an increase in the rates charged by the line or lines overcarrying rather than a reduction by the lines undercarried. Cf. testimony of P. A. S. Franklin, "Investigation of Shipping Combinations," p. 582.

¹⁸ N. D. L. V. Agreement, art. xvii, p. 21.

¹⁹ Agreement AA, art. xi, p. 59; Med. Steerage Traf. Agreement, art. x, p. 100.

duced, both groups of lines must come together and decide what suitable measures shall be taken.²⁰ On the other hand, the lines are not in all cases bound to await the results of measures which have been voluntarily taken by a given line to adjust its carrying to its allotment. Under the N. D. L. V. Agreement, the Board of Secretaries instead of doing this may direct other or more forcible measures to be put in operation, which measures, however, can refer only to rates and / or commissions. In such case the line or lines are bound to put these measures into force without delay or demur nor is there any appeal against the decision of the Board of Secretaries in this matter. If the lines themselves fail to propose the adoption of measures, the Board of Secretaries may act on their own initiative and proceed to take steps looking to an adjustment of the traffic, such as directing that rates shall be raised or commissions modified.²¹

Under the terms of Agreement AA the various other lines "are entitled" to await the result of measures which are taken by a line to adjust itself to its allotment, except in so far as they may represent 75 per cent of the shares, in which case they may, like the Board of Secretaries of the N. D. L. V., direct other and more forcible measures to be set in motion. These measures may relate only to rates and they must be put into effect immediately and without protest. If a line itself does not propose measures of adjustment, these may be ordered by a majority of the lines representing 75 per cent of the shares, which majority may direct either an increase or a reduction of rates.²²

Still further provisions for allotment enforcement are found in the N. D. L. V. Agreement. Each line is entitled to call for the intervention of the Board of Secretaries whenever the line itself or any of the other lines are 10 per cent above or below their allotted percentages in any one month. If a line has a shortage of over 20 per cent, the Board of Presidents, if asked to do so by any one line, is required to investigate, in order to determine whether the shortage has been caused by measures or omissions on the part of the line showing the shortage. If the shortage is due to any fault upon the part of the line, the Board of Presidents may, by unanimous vote, direct the removal of the cause

²⁰ Med. Steerage Traf. Agreement, art. x, p. 100.

²¹ N. D. L. V. Agreement, art. xvii and commentary, p. 21.

²² Agreement AA, art. xi, and commentary, p. 59.

thereof, upon penalty of a reduction of percental participation, the amount of such reduction being named at the time.²³

Administrative Features of Percental Participation.—For the purpose of the compilation of compensation accounts, Agreement AA and both the N. D. L. V. and the Mediterranean Steerage Traffic agreements require the lines to furnish to the secretary on the seventh, fifteenth, twenty-third, and last day of each month statistics of steerage passengers²⁴ carried.²⁵ In Agreement L it is specified that the lines shall make weekly returns to the secretary, no dates being mentioned.²⁶ From the data thus furnished him, the secretary must supply the lines weekly with the statistics of passengers carried, and monthly with a statement of the position of the lines versus each other. In the case of the N. D. L. V. and AA agreements, these monthly statements must be in the hands of the lines not later than the fifteenth day of the month after that for which they are made. In the case of the Mediterranean Steerage Traffic Agreement the tenth, instead of the fifteenth, of the month is specified.²⁷

The actual payment of compensation money for exceeding percentages is sometimes made monthly on the basis of provisional compensation accounts which are made out by the secretary. Where this is the case, the payments must be made within a fortnight of the receipt of the secretary's notice. In the agreements where the above rules govern, final settlements must be made at the end of the year on the basis of a compensation account prepared by the secretary and embracing the entire year. If there are any objections to this final account, they must be made within four weeks.²⁸ In the N. D. L. V. Agreement no provisional compensation accounts are provided for,

²³ N. D. L. V. Agreement, art. xviii, pp. 21-22. A shortage might occur owing to culpable management in neglecting overhaul and repairs, or through failure adequately to clean and ventilate steerage spaces which have been used for the transportation of cattle.

²⁴ Passengers carried in any intermediate class between steerage and cabin, and in some cases even cabin passengers, are ranked as steeragers unless paying at least a certain stipulated fare.

²⁵ N. D. L. V. Agreement, art. xvi, p. 20; Agreement AA, art. x, p. 58; Mediterranean Steerage Traffic Agreement, art. ix, p. 100.

²⁶ Agreement L, art. viii, p. 89.

²⁷ N. D. L. V. Agreement, art. xvi, p. 20; Agreement AA, art. x, p. 58; Med. Steer. Traf. Agreement, art. ix, p. 100.

²⁸ Agreement AA, art. viii, p. 57; Med. Steer. Traf. Agreement, art. vii, p. 99.

but compensation is effected at the end of each year on the basis of a compensation account prepared by the Board of Secretaries, which account must be settled within fourteen days. Objections to accounts must be submitted to the Board of Secretaries.²⁹ Under none of the agreements do objections to the correctness of accounts release the line or lines from the obligation to effect a provisional settlement.

Reservation of Special Areas.—One of the most important methods of preventing competition between the lines embraced in the various steamship conferences is by the reservation of special areas. At the time of the formation of a conference it not infrequently happens that a given line has for some time largely controlled the trade from a certain port or ports. When the conference is organized it is, therefore, often based upon a recognition of these existing interests. The N. D. L. V. Agreement is an example of this kind of an arrangement. In this agreement Bremen and all ports of the Weser are reserved to the North German Lloyd; Hamburg, Cuxhaven and all other ports of the Elbe, Stettin, and all ports of the Oder, and Havre to the Hamburg-American; Antwerp, the ports of the Schelde, Flushing, and Terneuzen included, and the entire coast of Belgium, to the Red Star; the entire coast of Holland, Flushing, and Terneuzen, included, and Boulogne-sur-Mer to the Rotterdam Line. The lines expressly bind themselves not to call either outward or inward at any home or adjacent port to which vessels of the other lines are sailing. The maintenance of this condition is regarded as so important that its contravention entitles the line whose trade is thus infringed upon to withdraw from the conference. The line infringing is regarded as having acted in such a manner as to render the continuance of the contract impossible and a penalty for this is applied.³⁰

Similarly Agreement G on third-class traffic between the N. D. L. V. and Cie. Gen. Transatlantique reserves to the latter the direct passenger business of Havre and all other French-Atlantic and channel ports except Cherbourg and Boulogne.³¹

Administrative Organization and Functions.—The principal administrative authority of passenger agreements and conferences is usually

²⁹ N. D. L. V. Agreement, art. xiv, p. 19.

³⁰ Cf. section on Guaranties and Penalties, N. D. L. V. Agreement, art. xxxi and commentary, pp. 34-35.

³¹ Agreement G., art. 10, p. 92.

the secretary.³² In the cases of the minor agreements where one or more of the parties is also a party to one of the major agreements, the secretary of the latter frequently acts as the secretary of the minor agreement. Thus Agreement L (between the N. D. L. V., and Transatlantic and American lines) and Agreement N (N. D. L. V. and Austro-Americana) both allot the secretarial duties to the secretary of the N. D. L. V. Agreement.³³

Three of the passenger agreements enumerate the functions of the secretary. From these enumerations we may summarize the duties of this officer somewhat as follows: (1) To receive and examine the statistical statements of the lines, as also the accounts, and to communicate both to the lines concerned. For this purpose the secretary is given access to the passenger offices of the lines, where he may examine all books, papers, correspondence, etc. (2) To collect the payment of penalties. (3) To effect the compensation accounts. (4) To control steerage prices (in the Mediterranean Steerage Traffic Agreement he controls commissions in addition). (5) To call meetings of the lines and to keep the minutes thereof. (6) To act as mediator in general in the transactions between the lines so far as the transactions relate to the contracts involved, and to use every effort to settle difficulties amicably. In addition by the terms of the N. D. L. V. Agreement the secretary is to act as mediator between the lines and the Boards of Presidents and Secretaries. The duties of the secretary require unprejudiced judgment. Both the AA and N. D. L. V. agreements require that he shall be entirely and in every respect independent of the parties to the contract. The Mediterranean Steerage Traffic Agreement provides that the secretary shall fulfill his duties in an unbiased manner. The salary of the secretary is paid by the parties to the contract in equal parts.³⁴

The N. D. L. V. Agreement differs from the other agreements in the matter of having a Board of Secretaries. Besides the secretary, there is a vice-secretary and a second vice-secretary. The post of

³² Agreement AA, art. xxiii, p. 67; Med. Steer. Traf. Agreement, art. xxv, p. 107.

³³ Agreement L, art. viii, p. 89; Agreement N, art. v and vi, p. 121.

³⁴ Where groups of lines constitute one or more parties, each group apparently counts as one party. This summary of the duties and functions of the secretary is made from the following: N. D. L. V. Agreement, art. xxxiv, p. 37; Agreement AA, art. xxiii, pp. 67-68; Med. Steer. Traf. Agreement, art. xxvi, pp. 107-108.

vice-secretary is filled by persons delegated by the lines, and who rotate in office according to the alphabetical order of the firms of the lines. The vice-secretary and second vice-secretary take the place of the secretary whenever the latter is unable to act. When the decisions of the secretary are not recognized and accepted by all the lines, the vice-secretaries are to decide jointly with the secretary by a majority, and the decision thus made is finally binding upon all the lines. Neither the vice-secretary nor the second vice-secretary can decide in matters in which their own lines are interested. In such cases their functions devolve upon the vice-secretaries next on the list. The expenses of the Board of Secretaries are paid by the lines in proportion to the percentage allotment of each.³⁵

Not unanalogous to the Board of Directors of a corporation is the Board of Presidents of the N. D. L. V. Agreement. "The Board of Presidents," so runs the contract, "has to take charge of all important and general questions." It consists of a delegate of each line, such delegate belonging, if possible, to either the Board of Managers, Board of Directors or Board of Surveillance of the line. The chairmanship is held for a term of three months according to the alphabetical order of the firms of the lines. This Board votes by majority, except in certain special cases, and if the vote is equally divided, the vote of the chairman gives a majority. Particularly, the Board of Presidents is required to take charge of: (1) the examination and management of all matters concerning bank deposits; (2) the appointment and dismissal of the secretary; (3) the fixing of penalties; (4) alterations and additions to the contract; (5) the admission of new members, conventions with other lines, and the measures to be adopted in case of exits occurring; (6) measures to be adopted in event of competition arising; and (7) settlement of differences which cannot be effected by the Board of Secretaries.³⁶

No administrative authority similar to the Board of Presidents is provided for in Agreement AA, but the Mediterranean Steerage Traffic Agreement has an administrative authority known as the Delegates of the Lines, who have full power to make binding arrangements on behalf of each of their respective companies, and to sign for the same. Decisions are taken by the delegates by a majority of

³⁵ N. D. L. V. Agreement, art. xxxiv, p. 38.

³⁶ N. D. L. V. Agreement, art. xxxv, pp. 39-40.

two-thirds of the lines, except where otherwise provided for under the contract.³⁷

The only other administrative authority provided for in passenger agreements is an arbitrator or arbitrators. The N. D. L. V. Agreement appoints as arbitrator the acting chairman of the board of the Chamber of Lawyers in Cologne, or in event of his refusal or inability to act, he is to be replaced by the individual who is his substitute for the chairmanship. Should neither of these officials be available, the president of the Cologne Chamber of Commerce is declared to be or else shall nominate the arbitrator.³⁸ Instead of a single arbitrator, a Board of Arbitrators may be provided for. By the terms of Agreement AA, unless the parties in dispute mutually agree to the appointment of a single arbitrator within fourteen days, each must name in writing without delay, an arbitrator to act on its behalf, and the two arbitrators thus chosen shall appoint an umpire. If they cannot agree upon an umpire, this official shall be nominated by the president of the Board of Trade, if the arbitration takes place in England, and by the President of the Hanseatic Court of Appeal if the arbitration takes place in Germany. If either fails to appoint an arbitrator within twenty-one days after notice of the intended reference has been given, and for seven days after service of notice in writing by the other disputing party or parties appointing his or their arbitrator, then the one arbitrator chosen may, if required to do so by the one who appointed him, act as sole arbitrator, and his decision shall be final and binding.³⁹

The arbitration provisions found in Agreements W and B on second-class business are identical with those of Agreement AA, except that they contain no arrangements for the designation of an umpire in case the two arbitrators fail to agree upon one.⁴⁰ In the Mediterranean Steerage Traffic Agreement the disputing parties are each required to name an arbitrator, the two to choose an umpire from the list of three gentlemen who are named in the agreement. In case they cannot agree upon an umpire the matter is decided by lot. Failure upon the part of a line to appoint an arbitrator is adjusted in the same way as under Agreement AA.⁴¹

³⁷ Med. Steer. Traf. Agreement, art. xxvii, p. 109.

³⁸ N. D. L. V. Agreement, art. xxxvi, pp. 40-41.

³⁹ Agreement AA, art. xxiv, p. 69.

⁴⁰ Agreement W., art. 16, pp. 140-141 and Agreement V., art. 20, pp. 151-152.

⁴¹ Med. Steer. Traf. Agreement, art. xxix, pp. 109-110.

No line has the right in matters pertaining to the contract to which it is a party to summon another line before the judicial courts.⁴² In lieu of this all differences are submitted to arbitration by the officials just described. In case differences cannot be settled amicably, any line has the right to call for arbitration.⁴³

In the N. D. L. V. Agreement notice of an appeal to the arbitrator against the decision of the Board of Presidents must be communicated to the secretary within fourteen days after such a decision. It must be addressed to him by registered letter, and he is bound to communicate it within three days to the arbitrator and to inform all lines immediately. The Mediterranean Steerage Traffic Agreement contains similar provisions, except that no time within which the appeal must be filed is mentioned. Under Agreement AA notice of an intention to prefer a claim must be given within a reasonable time to the party complained of, signed either by or in behalf of the complaining party and stating the nature and particulars of the complaint. This notice is deemed properly served if sent by registered mail to the office of the line in England or on the Continent. Copies are to be sent also to the secretary, whose duty it is to inform the other parties. Identically the same arrangements as these appear in Agreements V and W, except that the secretary is not required to inform the other party in regard to the complaint.⁴⁴

The N. D. L. V. and Mediterranean Steerage agreements specify that the arbitrator in the first case, and the arbitrators in the second case, must give to both parties the opportunity to be heard before making an award, and also that the award is to be accompanied by a written argument setting forth the ground upon which it is made. It is also expressly stated in both these agreements that the arbitrator or arbitrators are not bound to the observance of rules of legal procedure and the methods of taking evidence, and the method of procedure adopted for the ascertainment of facts is left to their conscientious decision. Under Agreement AA and also the Mediterranean Steerage Agreement, the arbitrator or arbitrators, not-

⁴² N. D. L. V. Agreement, art. xxxvi, p. 41; Med. Steer. Traf. Agreement, art. xxix, p. 109.

⁴³ Except in one or two classes of cases, where the decisions of some other authority may have been made final and binding. Cf. N. D. L. V. Agreement, art. xxxvi, p. 41.

⁴⁴ Agreement W., art. xvi, p. 40; Agreement V, art. xx, p. 51.

withstanding the fact that they may have made and published an award, have the power to reconsider the same and to make a new award provided satisfactory cause is shown within a certain time. The same is also true of Agreements V and W with reference to first- and second-class business respectively.⁴⁵ This condition, however, does not appear in the N. D. L. V. Agreement. Finally, the arbitration award is declared by all three of the major agreements to be equivalent to a legal judgment given by a court of last resort, and all parties relinquish all and every right to employ against the award legal means of any character whatsoever.⁴⁶

Guarantees and Penalties.—The adherence of the various signatories to the conditions of the passenger agreements is usually obtained by the requirement of a heavy guaranty which must be furnished by each line. Under the N. D. L. V. Agreement the lines must make the deposits in cash or negotiable securities. This deposit is in each case based upon about 20,000 marks for each participation quota of one per cent.⁴⁷ In Agreement AA each party deposits a promissory note for £1,000 for each one per cent of participation, payable only if accompanied by an award.⁴⁸ The Mediterranean Steerage Agreement requires each line, without regard to percental participation, to deposit a bank guaranty of 125,000 liras, payable only on an order signed by the secretary and the umpire of the arbitrators who has pronounced the award.⁴⁹ The funds thus deposited are regarded as liquidated damages and are entirely forfeited if any line making a deposit unduly withdraws from the contract before its expiration or resorts to actions which render its continuance impossible and which are therefore considered equivalent to a withdrawal. Acts of the latter character would be, for example, a refusal to pay compensation money; to replenish deposits in due time; assisting to start a new line which might interfere with the trade, etc.⁵⁰

⁴⁵ Agreement W, art. xvi, p. 142; Agreement V, art. xx, p. 153.

⁴⁶ N. D. L. V. Agreement, art. xxxvi, pp. 41-42; Agreement AA, art. xxiv, pp. 68-70; Med. Steer. Traf. Agreement, art. xxix, pp. 109-111.

⁴⁷ N. D. L. V. Agreement, art. xxv and commentary, p. 28.

⁴⁸ Agreement AA, art. xvii, p. 64.

⁴⁹ Med. Steer. Traf. Agreement, art. xx, p. 105. Compare also Special Agreements A, art. v, p. 118, and B, art. vi, pp. 114-115, requiring a guarantee of the same amount.

⁵⁰ N. D. L. V. Agreement, art. xxvii, pp. 31-32; Agreement AA, art. xviii, p. 64; Med. Steer. Traf. Agreement, art. xxi, pp. 105-106.

In case of an infraction or contravention of the agreement, the penalty therefor is fixed by the arbitrator under both the Mediterranean Steerage and AA agreements. In Agreements V and W it is also fixed by the arbitrator or arbitrators. By the terms of the N. D. L. V. Agreement the penalty is first fixed by the Board of Presidents, but if their decision is not accepted, it is fixed by the arbitrator. The minimum penalties are 5,000 lires, £250, and 5000 marks under the Mediterranean Steerage, AA, and N. D. L. V. agreements, respectively. No maximum is mentioned in the N. D. L. V. Agreement, while the other two major agreements stipulate that in no one case shall they exceed the full amount of the deposit. Agreements V and W, being only rate agreements, prescribe much lower penalties than are fixed by the major agreements. In each case the fine for violation by any party may not be less than £50 nor more than £500 sterling. In case of a violation by any agent the fine shall not be less than £5 nor more than £100.

In case of a willful or designed contravention or infraction, and especially a willful or intentionally incorrect statement of statistics in the case of the major agreements the penalty is large, being no less than 50,000 marks under the N. D. L. V. Agreement, 50,000 lires under the Mediterranean Steerage Agreement, and £2500 under Agreement AA. Unless the penalty provided in the major agreements is paid within eight days, the deposit is drawn upon for the required amount.⁵¹

Penalties or deposits when the latter are forfeited, are distributed by the N. D. L. V. and AA agreements to the line or lines having claims to compensation, who receive satisfaction out of the same pro rata to their claims. Any surplus remaining is then divided among the lines, excluding the penalized line or lines, proportionately to their participation quotas. No rules for distribution appear in the Mediterranean Steerage Agreement. In the N. D. L. V. Agreement it is further provided that the mere fact that a line has applied to an arbitrator for an award does not free it from the immediate payment of a penalty.⁵² In the event of a deposit having been forfeited in part or

⁵¹ N. D. L. V. Agreement, art. xxix, p. 33; Agreement AA, art. xx, p. 65; Med. Steer. Traf. Agreement, art. xxii, p. 106. Agreement W, art. xvi, p. 141; Agreement W, art. xx, p. 152.

⁵² N. D. L. V. Agreement, arts. xxviii and xxix, pp. 32-33; Agreement AA, arts. xix and xx, p. 65.

in whole, the same must be replenished up to its full amount within fourteen days thereafter.⁵³

Advertising.—The parties to the N. D. L. V. and AA agreements undertake to comply with article 8 of “The General Rules, Third Series, of the Continental Conference” which provide that “No circulars or publication shall be issued by any line reflecting upon or instituting comparisons with any Conference Line unfavorable to the latter, and no party hereto shall support any newspaper which may systematically attack any Conference Line.” A clause similarly worded is found in the Mediterranean Steerage Agreement.

It is explained in the AA and N. D. L. V. agreements that the article of the Continental Conference, just cited, has stood the test of many years of actual working, and that it was agreed that the language “support any newspaper” should be expressly understood to mean that no advertising be given to such newspaper. Further regulations stipulate that the lines shall send to the secretary any printed matter and circulars relating to the steerage business (in the Mediterranean Agreement any relating to steerage and second-cabin business). The Mediterranean Steerage, though not the AA and N. D. L. V. agreements, require that a sufficient number of circulars be sent to the secretary to enable him to supply a copy to each one of the parties. Agreement W which is a rate agreement upon second-class business requires that in the case of steamers carrying only second-class passengers, this fact must appear in all advertising, circulars or other printed matter without any reference to such passengers enjoying so-called first-class or saloon privileges.⁵⁴

Regulation of Agents.—The lines are bound by the terms of the various agreements to be responsible for their agents, employees, and representatives in respect to the contracts. Parties to the N. D. L. V. Agreement are bound, upon the demand of the Board of Secretaries immediately to dismiss an agent who has violated the conditions of the contract in regard to advertising. The same regulation exists in Agreement AA, except that no demand is made upon the lines, as in the N. D. L. V. Agreement. The terms of the Mediterranean

⁵³ N. D. L. V. Agreement, art. xxx, p. 34; Agreement AA, art. xxi, p. 66; Med. Steer. Traf. Agreement, art. xxiii, pp. 106-107.

⁵⁴ N. D. L. V. Agreement, art. xxiv and commentary, p. 27; Agreement AA, art. xvi and commentary, p. 63; Med. Steer. Traf. Agreement, art. xviii, p. 104; Agreement W, art. ix, p. 138.

Steerage contract are even broader. After declaring the lines responsible for agents, etc., it provides for the infliction of a fine upon any agents guilty of *any* infraction of the agreement and orders the disqualification of the agent upon a repetition of his offence. The Mediterranean contract further forbids the agents of the lines to book passengers for any opposition line, or to be interested therein, upon penalty of disqualification. Both the N. D. L. V. and AA agreements forbid the engaging by any of the other lines of the agent of a line who has been dismissed for violating the conditions in regard to advertising, nor are the parties to these agreements allowed to have business connections of any sort whatsoever with such an agent.⁵⁵ Definite commissions to agents are also prescribed in the various contracts.⁵⁶

The Admission of New Lines and the Alteration of Existing Agreements.—Other lines may be admitted as parties to the various agreements with the unanimous consent of all the lines⁵⁷ (in the case of the N. D. L. V. Agreement, with the unanimous consent of the Board of Presidents, which is practically equivalent to the unanimous consent of the lines.) The same rule prevails in regard to all alterations and additions to the contract, which to be valid and binding upon the lines, however, must have the written consent of the lines.⁵⁸

Two of the major passenger agreements, the AA and N. D. L. V., are for three years, and all three are to continue from year to year, except when notice of intention to terminate is given by one of the lines a certain number of months previously. The original Mediterranean Steerage contract is for two years. The withdrawal of any line automatically releases the other lines from all obligations under the contract (except the payment of compensation money in the AA and Mediterranean agreements), unless the other lines agree to continue the contract under the same or other terms.⁵⁹ Among the minor

⁵⁵ N. D. L. V. Agreement, art. xxiv and commentary, p. 27; Agreement AA, art. xvi and commentary, p. 63; Med. Steer. Traf. Agreement, art. xix, p. 105.

⁵⁶ N. D. L. V. Agreement, art. xxii, p. 25; Agreement AA, art. xiv, p. 61; Med. Steer. Traf. Agreement, arts. xii and xiii, p. 101; Agreement W, art. xi, pp. 138-139; Agreement V, art. xiii, pp. 149-150.

⁵⁷ Agreement AA reads that the vote must be unanimous unless otherwise provided for in the contract.

⁵⁸ N. D. L. V. Agreement, art. xxxii, p. 36; Agreement AA, art. xxii, pp. 66-67; Med. Steer. Traf. Agreement, art. xxiv, p. 107.

⁵⁹ N. D. L. V. Agreement, art. xli, pp. 46-47; Agreement AA, art. xxvii, p. 73; Med. Steer. Traf. Agreement, arts. xxxii and xxxiii, p. 112.

agreements, Special Agreement B⁶⁰ and Agreement L⁶¹ were each originally concluded for one year; Special Agreement A⁶² for two years; Agreements V⁶³ and W⁶⁴ for three years; and Agreement N⁶⁵ for four years. All are to continue from year to year unless notice of discontinuance be given a certain period previous to the date of termination.

Conference Meetings.—The meetings of the various lines are convened by the secretary. The AA Agreement alone provides definite dates for regular meetings, i.e., the first Thursday of March and December, although the Mediterranean Agreement provides that they be held, if possible, at least once in six months. The last mentioned agreement also leaves to the discretion of the parties the designation of the place of meeting. Meetings of the lines governed by Agreement AA are held alternately at London and Cologne, commencing with Cologne. Meetings of the lines parties to the N. D. L. V. Agreement are held at Cologne, unless another place is agreed upon. All meetings under the N. D. L. V. Agreement are, and special meetings under the other two agreements may be, demanded by the lines, and must be held within certain periods of time varying in accordance with the number of lines requesting a meeting. The subjects to be dealt with at such meeting must be made known to all parties concerned several days before the meeting. The parties present form a quorum irrespective of the number, but resolutions upon subjects not mentioned in the notification cannot be taken under the N. D. L. V. Agreement, even though all the parties present agree, nor can such resolutions be taken under Agreement AA unless all parties to the contract are represented and agree. By the terms of the Mediterranean Agreement resolutions on subjects not notified to the lines become valid only when unanimously agreed to by all the lines.

In all cases resolutions on subjects transmitted by the secretary can be taken by a vote given in writing, provided no one objects to such a manner of voting. Decisions under the Mediterranean Agreement are made by a majority of two-thirds of the lines, except when

⁶⁰ Art. vii, p. 115.

⁶¹ Art. x, p. 89.

⁶² Art. vi, pp. 118-119.

⁶³ Arts. xvi and xvii, p. 150.

⁶⁴ Arts. xiii and xiv, p. 140.

⁶⁵ Art. xix, p. 125.

otherwise provided, and under the N. D. L. V. and AA agreements the parties present are required to sign the minutes.⁶⁶

Meeting Competition.—The various passenger agreements are practically silent as regards methods of meeting competition. The only information to be gathered upon this subject is from the testimony in the suit brought by the federal government against the trans-Atlantic steamship lines. According to a letter dated May 28, 1908, written by the Holland-America Line in New York to the Holland-America Line in Rotterdam, certain instructions were received from Mr. H. Peters, the Conference Secretary, after a meeting of the Atlantic Conference. These instructions were to the effect that the Conference had resolved that opposition steamers were to be appointed by vote of a majority of the members of the North Atlantic and Continental Conferences, in New York, the chairman to have the casting vote in event of an equal division. The members were to be guided in their vote by the suitability of the steamers. Other things being nearly equal, steamers sailing direct for the Continent for the parties short or most short were to be appointed. The New York conference was given full power to appoint "a small committee" to carry out these arrangements. If more passengers were booked for a fighting steamer than it could carry, the excess was to be transferred to other suitable conference steamers.

Following these instructions, which were received by cable, meetings of the general managers and passenger agents were held, and "a small committee" consisting of three members, was appointed for the selection of competitive steamers. It was further agreed that the passenger managers should serve on this committee in rotation. Apparently, judging from this letter and the testimony of Mr. Nyland, the function of "the small committee" was to suggest steamers for meeting competition, the final decision in appointing these steamers, however, resting in the hands of the majority of the members of the North Atlantic and Continental Conferences, as above mentioned. The steamers so selected were to sail upon the same days and between the same ports as the independent steamers. The rate offered by the opposition steamer or steamers of the conferences appears to have been nearly always as low, and sometimes lower, than that offered by the independent line. Moreover, the Conference opposi-

⁶⁶ N. D. L. V. Agreement, art. xxxix, pp. 44-45; Agreement AA, art. xxv, pp. 71-72; Med. Steer. Traf. Agreement, art. xxvii, pp. 108-109.

tion steamer usually had an advantage through the fact that its steerage accommodations were often, if not always, superior to those of the independent carrier. The evidence seems to show that such opposition sailings were repeatedly used against the Russian Volunteer Fleet, the Uranium Steamship Co., and the Russian East Asiatic Line.⁶⁷ The expenses and loss from the lower rates resulting to any line whose vessels had been selected as opposition steamers were distributed over the membership of the conference. In this way each conference member suffered much less than the single line which was fighting the group.⁶⁸

FREIGHT CONFERENCES AND AGREEMENTS

The ramifications of freight conferences and agreements are much wider than are those of passenger arrangements. Agreements of the latter kind are comparatively few. The former are very numerous and therefore the difficulty of an adequate discussion of their administrative features is considerably greater.

Division of Traffic.—In the preceding section the regulation of competition between the conference lines was made the starting point of the discussion. Under the passenger agreements the principal method of regulating this competition is by a division of the traffic among the lines, a certain percentage of the passengers carried being allotted to each line. An approach to this practise in the freight traffic is the division of sailings or loadings among the various lines that are parties to an agreement. Thus, on a basis of 41 sailings in the American-Asiatic trade, eastbound, the following division was effected:

United States & China-Japan Line	13
Barber & Co.....	13
American & Oriental Steamship Co.....	8
American-Asiatic Steamship Co.....	7
	<hr/> 41 ⁶⁹

⁶⁷ Petitioner's Exhibit, No. 27, vol. i, pp. 272-273, and testimony of A. C. H. Nyland, Petitioner's Testimony, U. S. v. Hamburg-Americanische Packetfahrt-Actien Gesellschaft, vol. i, pp. 452, ff.

⁶⁸ *Report on Steamship Agreements and Affiliations in the American Foreign and Domestic Trade*, vol. iv: "Proceedings of the Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations," p. 46.

⁶⁹ Memorandum of Agreement (called the eastward agreement) regarding the trade between the Atlantic ports of the United States of America and eastern

Similarly, in the South American trade between the ports of the United States and Brazil and vice versa, Lamport & Holt, the Prince Line, and the combined Hamburg lines, were each allotted 24 sailings *outwards* per annum.⁷⁰

Instead of dividing traffic by dividing the sailings in the trade, traffic arrangements may be made whereby it is agreed that the tonnage in a given trade shall be supplied in certain proportions by the lines engaged therein. Thus, in the oral agreement between the lines engaged in the American-Australian trade, tonnage is furnished by the different parties as follows: 42½ per cent by the American & Australian Line; 35 per cent by the United Tyser Line; and 22½ per cent by the United States and Australasia Company.⁷¹

It is not necessary, however, that a percentage basis should be used in distributing tonnage. In the outward trade between the United States and South and East Africa, the proportion of tonnage furnished is distributed by fractions, as follows: Union Castle Mail Steamship Co., Ltd., two-sevenths; Bucknall Steamship Line, Ltd., one-seventh; Clan Line, one-seventh; Hansa Line, one-seventh; Houston Line, one-seventh and the Prince Line, one-seventh.⁷²

Pooling.—Further restriction of competition among the various lines is secured by dividing the freight money which is received, or portions thereof, in certain agreed proportions among the lines. In the case of the N. D. L. V. Westbound Freight Agreement the percentages of the pool allotted to each line were originally determined from the statements of the lines as to their freight receipts in the years 1891, 1892 and 1893.⁷³ The same method of determining percentages also obtains in the Baltic pools.⁷⁴

Percental participation in the pooling of earnings may be provided

Asiatic ports, Exhibit I, United States of America, *v.* American-Asiatic Steamship Co. et al., Petition, U. S. D. C. for the Southern District of New York, p. 27.

⁷⁰ Memorandum of Agreement, Exhibit I, United States of America *v.* Prince Line, Ltd., et al., Petition, U. S. D. C. for the Southern District of New York, p. 22.

⁷¹ "Proceedings of the Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations," ii, 1386. All footnotes in the discussion of freight agreements refer to this report, except where otherwise specified. Volume and page numbers alone, therefore, will be used.

⁷² II, 1388.

⁷³ I, 592.

⁷⁴ II, 1376.

for, however, upon a different basis. In the American-Australian direct trade from New York, the percentage allowed each line in pooling is based upon the tonnage furnished by the lines which are parties to the oral agreement. The same is true of the direct service from the United States to South and East African ports.⁷⁵ Again, in the trade between the United States and Brazil the pooling agreement of 1908 divided freight in the same proportion as the number of sailings were divided.⁷⁶

It seems to be customary to allot a specific share of the pool to each line, though in the Mediterranean Agreement governing freight shipments from Italy and Sicily to the United States the lines are divided into two groups and a specific share is allotted to each group.⁷⁷

The freight money that is pooled or divided among the lines may be the total freight, which is the case under the N. D. L. V. Agreement,⁷⁸ the net freight, as in the American-Asiatic trade via Suez,⁷⁹ or only a portion of the freight money. An example of the last named class of pooling arrangements is found in the agreement between the Hamburg-American and the Royal Mail Steam Packet Company governing the traffic to and from New York and Jamaica, Colombian ports and Colon, whereby 50 per cent of the earnings (excepting those on certain specified commodities) are pooled.⁸⁰ In the New York-West African trade 25 per cent of all freight and passenger receipts is allowed the carrying steamer, and the balance is pooled.⁸¹ In the Baltic pools still a different arrangement exists. In this case the pooling arrangement applies only to certain specified commodities, there being no such arrangement for the traffic in other commodities.⁸²

According to the Mediterranean Freight Traffic Agreement west-bound a line that has overcarried is bound to regulate its service as nearly as possible to its proportion, in order that the amount paid to or

⁷⁵ II, 1386, 1388.

⁷⁶ Exhibits I and II, *United States of America v. Prince Line, Ltd.*, Petition, pp. 22, 25.

⁷⁷ III, 64.

⁷⁸ I, 592.

⁷⁹ Exhibit III, *United States of America v. American-Asiatic Steamship Co.*, Petition, p. 38.

⁸⁰ I, 525.

⁸¹ II, 1383.

⁸² II, 1375-1376.

received from the pool may be as small as possible.⁸³ No provision for the enforcement of this rule seems to be made, however. The N. D. L. V. Westbound Freight Agreement, therefore, goes a step farther than the Mediterranean Agreement, by providing that if it appears from the monthly statements that the freight receipts of one company or another are below or above the allotted percentage, and further, that if it does not seem probable that an equalization will take place in the course of the year without special measures, the conference must try to bring about an adjustment through a regulation of rates.⁸⁴ A similar arrangement appears in the agreements governing the traffic to and from New York and Jamaica, Colombian ports, and Colon.⁸⁵

Administration of Pooling Agreements.—The administration of pooling agreements varies all the way from little or no organization at all to very complicated and elaborate arrangements. Perhaps the best example of the latter type is to be found in the Mediterranean Freight Agreement. Each line is required to forward to the assistant secretary not more than twenty days after the sailing of each steamer, "a manifest showing the number and description of packages and contents, weight in tons of 1,000 kilos, and measurement, rate of freight, gross freight, deductions on account of rebates or special commission, the resulting total net freight, the carrying freight, and the freight accruing to the pool." The assistant secretary is required to check these manifests with the tariff of rates agreed upon to see that the correct returns have been made. Copies of complete manifests of cargo must also be exchanged among the agents of the lines. At each port the agents have the privilege of nominating a party with whom the manifests shall be deposited within ten days after the sailing of a steamer, and shall there remain open for inspection by the various lines or their agents. Statements must be sent each month by the assistant secretary to the general secretary and also to each line, showing the sailings of all the lines during the previous month and the amount pooled and also the positions of each line or group, whether undercarried or overcarried, according to the share allotted to it.⁸⁶ Similarly, in the New York-Brazilian trade all accounts and manifests were required under the agreement of 1908 to be lodged as soon as possible

⁸³ III, 65.

⁸⁴ I, 593.

⁸⁵ I, 526.

⁸⁶ III, 64-65.

with the secretary, but not later than thirty days after the departure of the steamer. The secretary then made up a monthly statement showing percentages of tonnage carried, freight earned and the amount contributed to the pool by each one of the lines.⁸⁷

In the agreement between the Hamburg-American Line and the Royal Mail Steam Packet Company of October 7, 1908, the outward and inward manifests must be sent to the principals in London and Hamburg and copies exchanged between the two companies in New York. Presumably the purpose of this arrangement is for pooling.⁸⁸ In the N. D. L. V. Westbound Freight Agreement the returns which are made to the secretary are *monthly* reports and the secretary, on the basis of these, compiles the statements and transmits them to the interested parties.⁸⁹ Similarly, in the Baltic pools the returns which are made to the secretary are for each month and must be in his hands by the end of the month. The statistical statements based upon these returns must be completed by the acting secretary on or before the 15th day of the following month.⁹⁰

The American-Asiatic pooling agreement governing the traffic between Atlantic ports of the United States and the Far East via Suez requires the returns to be made up as soon as possible after the termination of each steamer's voyage eastward or westward, and these are then forwarded to T. B. Royden in Liverpool.⁹¹ In the American trade to South and East Africa no returns seem to be made. Instead the freights collected by the agents are transmitted to the principals in London, who then pool them among themselves.⁹² No provisions either for the compilation of pooling statistics or for the settlement of pooling accounts other than those requiring monthly statements are made by the Mediterranean Freight Agreement.

Settlements under the pooling arrangements are made most commonly on a half-yearly basis. This is the case in the N. D. L. V. agreement westbound, in the trade with Haiti, in the Baltic pools, and in the West African trade.⁹³ In the pooling agreement in the

⁸⁷ Exhibit II, United States of America v. Prince Line, Petition, p. 27.

⁸⁸ I, 527.

⁸⁹ I, 593.

⁹⁰ II, 1376.

⁹¹ Pooling Agreement, Exhibit III, United States of America v. American-Asiatic Steamship Co., Petition, p. 38.

⁹² II, 1388.

⁹³ I, 522, 593; II, 1376, 1384.

American-Asiatic trade via Suez and also in the former agreement between the lines in the New York-Brazilian trade, accounts and balances are prepared by the secretary on a yearly basis.⁹⁴

Reservation of Special Areas.—As in the case of passenger traffic agreements, competition among the parties to freight agreements and conferences is also restricted by the reservation of special areas. In the previous section it was pointed out that the N. D. L. V. Passenger Agreement reserved certain ports to each line. The reservations made in that agreement, however, apply also to freight as well as passenger traffic.⁹⁵ The same is true of the clause in passenger agreement G reserving Havre to the Cie. Gen. Transatlantique.⁹⁶ The agreement covering the trade between the United States and Haiti reserves certain ports to each of the parties to the agreement,⁹⁷ and a similar arrangement is found in the agreement between the Royal Mail and Hamburg-American Lines covering the service between New York, Jamaica, Colombian ports and Colon⁹⁸ in both directions. Again, in the South American trade there exists a tacit understanding between the three conference lines operating to southern Brazilian ports and the Booth Line to keep the Amazon territory separate, allowing the Booth Line to occupy it exclusively.⁹⁹ A similar understanding to respect each other's territory also seems to exist between the River Plate conference lines and the Brazilian conference lines.¹⁰⁰

Determination of Rates.—Various kinds of rate arrangements and agreements are to be found in the American freight traffic to and from foreign ports. In some cases the rates are fixed by the terms of the agreement, as in the Mediterranean Westbound Agreement, or as in the N. D. L. V. Westbound Freight Agreement, which definitely prescribed certain minimum rates. The agreement between the Royal Mail and Hamburg-American Lines for the service from New York to Jamaica, Colombian ports, and Colon, and vice versa, provides for the issuance of a joint tariff by the lines serving this territory.¹⁰¹

⁹⁴ Exhibit III, United States of America *v.* American-Asiatic Steamship Co., p. 43; Exhibit II, United States of America *v.* Prince Line Ltd., p. 27.

⁹⁵ United States of America *v.* Hamburg-Americanische Packetfahrt-Actien Gesellschaft, Petition Exhibits, vol. i, exhibit II, art. xxxi, p. 35.

⁹⁶ *Ibid.*, Exhibit V, p. 92.

⁹⁷ I, 521-522.

⁹⁸ I, 525 ff.

⁹⁹ I, 47; IV, 169.

¹⁰⁰ IV, 175.

¹⁰¹ I, 525, 593; III, 64.

Where rates are not definitely fixed by the terms of the agreement themselves, they are variously determined. In some cases the control of rates is left entirely in the hands of the agents. Thus an understanding exists among the trans-Atlantic lines with reference to minimum freight rates eastbound to the Mediterranean. These rates are fixed by the agents in New York in conference and without any dictation from abroad as to what such rates shall be.¹⁰² In the trade between the United States and Great Britain the lines running to each of the four ports of London, Liverpool, Glasgow, and Manchester, meet in conference at New York City to discuss their rates, and they file and notify each other of their minimum rates upon a large selected list of articles. A similar arrangement exists in this trade westbound.¹⁰³ Again, in the trade from the United States to the Far East via Suez, the rates eastward are controlled by the agents in New York, who before naming or altering a rate must confer among themselves and agree as to the rates to be named or reduction to be made. Similarly, rates westward from all ports east of Singapore are determined by the Hong Kong agents in conference, and from Singapore and Penang by the Singapore agents in conference.¹⁰⁴

On the other hand, the agents in some cases do not exercise any authority whatsoever over rates. In the trade to South and East Africa, for example, the rates are made by the principals of the lines in London and put into effect by the agents in New York. The New York Conference may recommend changes in rates, but these are accepted or rejected by the London conference as they deem desirable.¹⁰⁵ The same is true of the trade between the United States and Brazil. In this case the London Conference, composed of the owners of the line, exercises the rate-making authority, and the New York Conference seems to exist only for the purpose of putting into effect the instructions of the London Conference.¹⁰⁶

In at least one case both principals and agents appear to participate in the fixing of rates. This instance is in the direct trade between New York and India. While freight rates in the outward service are

¹⁰² IV, 82.

¹⁰³ IV, 61 and 65. Cf. also American-Australian trade, II, 1386.

¹⁰⁴ Exhibits I and II, *United States of America v. American-Asiatic Steamship Co.*, Petition, pp. 27, 31-32.

¹⁰⁵ II, 1388; IV, 93, 95-96.

¹⁰⁶ IV, 159-160.

fixed and changed by the agents in New York, in the homeward service they are fixed and altered by the Indian agents in consultation with the London principals.¹⁰⁷ In the N. D. L. V. Westbound Agreement the fixing of rates is done by way of an open agreement.¹⁰⁸

Administrative Organization.—In those freight agreements where any administrative organization at all is described, the secretary is the principal authority, as he is in the case of the passenger agreements. Only in the Mediterranean Freight Traffic Agreement, however, is the work of this official outlined in any detail. Under this agreement there is both a secretary and an assistant-secretary, and their duties may be enumerated as follows:

(1) To receive the statistical statements and manifests, and to examine them and the accounts, for which purpose they have access to the freight offices of the lines and of the agents, where they may examine books, manifests, correspondence, etc.

(2) To communicate the statistics and accounts to the lines and act as mediator in general in the transactions between the lines.

(3) To control the freight rates, commissions, and rebates, and to see that the lines receive regularly and at the same time all necessary statements.

(4) To collect the payment of penalties and effect compensation accounts.

(5) To call meetings of the lines and to keep minutes of such meetings.

(6) To use every exertion to settle difficulties between the lines in an amicable fashion.

The salaries of the secretaries and the expenses for conference, etc., are to be borne equally by the two groups of lines which are parties to the contract.¹⁰⁹

Several of the agreements refer to the secretary, though not outlining his duties more than merely to prescribe that returns shall be made to him by the various lines.¹¹⁰ This is true of the pooling agreement between the United States and the Far East via Suez, the former agreement in the trade between the United States and Brazil and the

¹⁰⁷ IV, 123.

¹⁰⁸ I, 593.

¹⁰⁹ III, 66-67.

¹¹⁰ *United States of America v. Prince Line*, Petition, p. 27; *United States of America v. American-Asiatic Steamship Company*, Petition, p. 38; I, 593.

N. D. L. V. Westbound Freight Agreement. Some of the freight agreements, and even those containing pooling arrangements, make no mention of a secretary, much less his duties. In the cases of those agreements to which only two lines are parties it seems likely that this is due to the fact that there is no conference secretary, the business between the two lines being regulated by a mutual agreement.

Besides the secretary and assistant secretary, the execution of the Mediterranean Westbound Freight Agreement is entrusted to the delegates of the lines and the arbitrator. The delegates of the lines to the conference must have full power to make binding arrangements on behalf of their respective companies and to sign for the same.¹¹¹ No line under the Mediterranean Agreement has the right to summon any other line or lines before the judicial courts. In case of differences each line has the right to call for an award of the arbitrators. It is required that this appeal should be addressed to the general secretary by registered letter, and the secretary must communicate it within three days to every line, and ask the disputing parties each to name an arbitrator. The arbitrators thus appointed are required to choose as umpire one of three persons named in the agreement, and if they cannot agree, he is to be chosen by lot. If either party neglects to appoint an arbitrator within fourteen days after notice has been given, the one nominated by the other party has full and complete power to deal with the case. The award must be accompanied by a written argument, stating the ground upon which it is based, and it must also settle the question of the costs of the arbitration. Each party must be given an opportunity to be heard and the arbitrators are not bound by any legal procedure in their methods of taking and ascertaining the facts or in arriving at a decision. The award takes the place of a judgment of a court of law of last resort, and the parties specifically relinquish the right to employ any legal means whatsoever against the decision. The arbitrators, however, have the power to reopen and to reconsider the award if cause be shown within one week, or, if the arbitrators see fit to extend the time, within three weeks.¹¹²

Practically none of the other agreements outlines such complete arrangements for arbitration as those just described. In the Baltic

¹¹¹ III, 67.

¹¹² III, 67-68.

pools disputes are referred to the decision of two arbitrators representing the respective parties to the dispute. These two are empowered to appoint an umpire and the decision of the arbitrators or umpire is final and binding.¹¹³ Arbitration under the pooling agreement in the service between New York and Haiti is referred to three persons residing in New York City, not lawyers, one to be chosen by each of the parties, and the third, who is required to be entirely disinterested, by these two. The decision of these arbitrators is binding upon all parties, provided that it be rendered in writing under their hands and seals within ten days after submission to them of the matter which is in controversy. An interesting provision in this agreement is that all matters in controversy at any one time shall be submitted to such arbitration together.¹¹⁴

In the African West Coast Agreement each party names for arbitration purposes its own commercial representative. If the arbitration is demanded by the English lines, the umpire is named by the Hamburg Chamber of Commerce. If, on the other hand, it is called for by the German lines, the umpire is named by the London Chamber of Commerce. The decision of the majority is binding upon both parties without recourse to the courts of law.¹¹⁵

The recent pooling agreement in the New York-Brazilian trade provided that the umpire should be appointed by two arbitrators in London, one to be named by each party, unless they were unable to agree upon any one, in which case he was to be nominated by the Hanseatic Court of Appeal. If one of the parties failed to nominate an arbitrator within twenty-one days, the arbitrator nominated by the other acted alone. The same arrangements also governed arbitration under the agreements in this trade dividing sailings among the lines¹¹⁶ except that *no* provision was made for failure of the arbitrators to agree upon an umpire.

In case of any dispute arising under the pooling agreements in the trade between the United States and the Far East via Suez, the matter is left to the decision of the signatories, whose voting power is pro rata to their share of the business. If a decision so arrived at is

¹¹³ II, 1376.

¹¹⁴ I, 522.

¹¹⁵ II, 1384.

¹¹⁶ Exhibits I and II, *United States of America v. Prince Line*, Petition pp. 24, 28.

objected to, the matter is referred to the decision of two arbitrators, who must be commercial men in London, New York, or Hong Kong, whichever place in the opinion of the majority of the signatories is best suited to the purpose. One arbitrator is appointed by each party and these two appoint an umpire, whose decision is final and conclusive. Identically the same arrangement for arbitration exists for the settlement of disputes under the terms of the eastward agreement of this trade dividing sailings.¹¹⁷

Agents' Commissions.—Under the Mediterranean Westbound Agreement it is provided that all rates shall be subject in the option of the lines to their usual general agents' commissions, not exceeding 4 per cent at Genoa and 2 per cent at all other ports. It is also agreed that no line or general agent will pay to agents, etc., any portion of their head office or general agents' commission.¹¹⁸ The agreements in the trade between New York, Jamaica, Colombian ports, and Colon, provide an agent's commission of 5 per cent on freight earned.¹¹⁹

An interesting feature of the recent pooling agreement in the New York-Brazilian trade is an agents' commission pool. A loading commission of 5 per cent on the net freight earned was paid by all the lines to their general agents in New York, to be placed in a pool for division among them in equal proportions.¹²⁰ The pooling rules, both eastward and westward, in the trade to the Far East from the United States via Suez, provide a 5 per cent loading commission.¹²¹

Guaranties and Penalties.—Guaranties and penalties do not seem to be as frequent a feature of freight agreements as they are of passenger agreements. The Mediterranean Westbound Freight Agreement, however, requires each line to deposit with the general secretary a bank guaranty of 50,000 liras, payable only on an order signed by the general secretary and the umpire of the arbitrators who has pronounced the award. Unless claims for this guaranty have been presented to the general secretary, it becomes void at the end of six months after the expiration of the contract. The total sum deposited

¹¹⁷ Exhibits I and II, *United States of America v. American-Asiatic Steamship Co.*, Petition, pp. 29-30, 46.

¹¹⁸ III, 64.

¹¹⁹ I, 527.

¹²⁰ Exhibit II, *United States of America v. Prince Line*, Petition, p. 26.

¹²¹ Exhibit IV, *United States of America v. American-Asiatic Steamship Co.*, Petition, pp. 62-64.

by a line is regarded as the amount of liquidated damages, and so entirely forfeited if a line unduly withdraws from the contract before its expiration or resorts to actions which render its continuance impossible, such as a refusal to pay compensation money, or a failure to replenish the deposits in due course, or directly or indirectly assisting an opposition line.¹²²

In the Calcutta Trans-Pacific Conference, upon the signing of the annual agreement, each party thereto deposits for a period of one year in a recognized European bank in Hong Kong \$50,000 in Hong Kong currency. Such deposit is made out in the name of the Calcutta Trans-Pacific Conference, and upon the signature of six parties thereto the conference may cash or withdraw such deposit. Upon a resolution by a majority of the conference such deposit (together with accrued interest) may be dealt with as the majority may determine, provided such majority decides that any party has violated the conditions of the agreement. All the members of the conference agree to abide by the decision of the majority regarding the forfeiture or application of the deposits, and any decision so rendered is conclusive and binding upon the party concerned.¹²³

Under the Mediterranean Westbound Agreement penalties for violation are fixed by the arbitrators, but are not to exceed the total deposits of the line. Nor may they be less than 5000 liras, except for a delay in making returns to the secretary, in which case a fine of 100 liras is imposed. In case of a willful misstatement of statistics the penalty assessed is required to be not less than 25,000 liras. If the penalty is not paid within eight days after the line concerned has been notified of the award, the deposit will be drawn upon. All deposits must be replenished within fourteen days after the day upon which they have been dealt with.¹²⁴

The Westward Agreement in the trade between the United States and the Far East via Suez (from China, Japan, etc., to Atlantic ports of the United States), provides that any breach of the agreement shall render each offender liable to a penalty of £1000 sterling, or a forfeiture of all profit made by the breach, whichever amounts to the most money, the amount of the penalty to be divided among the other signatories pro rata according to their interest in the annual loadings,

¹²² III, 86.

¹²³ IV, 145.

¹²⁴ III, 65, 66.

Inadvertent breach of the agreement is not penalized by the £1,000 forfeiture, but only the gross profit which is made through such a breach is confiscated.¹²⁵

The former pooling agreement in the trade between the United States and Brazil made similar arrangements to those just described, providing that deliberate breach was to be punished by a fine of from £100 to £5,000. Mistakes and inadvertences were not to be deemed a breach of the agreement. All penalties were divided between the other parties to the agreement in equal proportions.¹²⁶

Admission of New Lines and Alteration of Agreements.—According to the Mediterranean Westbound Agreement, other lines can be admitted to the contract and its terms and conditions can be altered, etc., but only with the unanimous consent of the lines party thereto. Alterations and additions can be binding only when all of the lines have given their written consent.¹²⁷

Meetings of the Lines.—Not many of the agreements provide for regulations regarding conference meetings. The Mediterranean Westbound Freight Agreement, by far the most complete in detail of any of the agreements, outlines a mechanism practically identical with the system of the Mediterranean Steerage Agreement. Meetings of the lines are to be held, if possible, at least once in each six months, at dates and places agreed upon. Special meetings must take place within a period of three, four or five weeks, depending upon the number of lines demanding a meeting. The subjects to be dealt with must be notified to the general secretary, who is required to inform the lines not less than ten days before the meeting. The parties present form a quorum without regard to their number, but only in so far as subjects are concerned which have been duly notified to all the lines by the secretary. Other resolutions are valid only when agreed to by all the lines. Resolutions upon subjects notified to the lines by the secretary are to be taken in writing if no line objects. The delegates of the lines must have full power to make binding arrangements for their company and to sign for the same. Decisions are taken by a four-fifths majority, except where the agree-

¹²⁵ Exhibit II, United States of America *v.* American-Asiatic Steamship Company, Petition, p. 37.

¹²⁶ Exhibit II, United States of America *v.* Prince Line, Petition, p. 29.

¹²⁷ III, 66.

ment provides otherwise, and each line has a vote only upon questions connected with the agreements to which it is a party.¹²⁸

The former pooling agreement in the trade between New York and Brazil provided that a committee was to be formed in New York composed of members of the firms of agents or brokers representing the different lines, which should hold regular meetings at the appointed place. No meeting could be held unless a representative of each line was present. All decisions had to be unanimous except in regard to certain freight matters, and the chair was taken alternately by the agents of each of the parties for such periods as were agreed upon between them.¹²⁹

The only provision in the N. D. L. V. Westbound Agreement in regard to meetings is that as a rule they shall be held every four weeks by the representatives of the freight departments of the combined lines.¹³⁰ Meetings under the agreement in the trade between New York, Jamaica, Colombian ports, and Colon, are held on the fifteenth of each month.¹³¹ In the Calcutta-Pacific Conference any of the parties may summon a meeting of the conference to consider a revision of the scale of rates. Each line is represented by one delegate, and the decisions of the conference must be unanimous.¹³²

Deferred Rebates.—Generally speaking, the deferred rebates which are granted to shippers by the terms of many of the freight agreements are on a percentage basis. Ten per cent is probably the most prevalent rate, though in the New York-River Plate trade, northbound, it is 5 per cent.¹³³ Instead of a percentage arrangement a deferred rebate may be a specific amount per ton of goods shipped. This is the case in the Calcutta-Pacific Conference, which allows a rebate of 75 cents a ton on gunnies and jute from Calcutta to Hong Kong for transshipment to the United States.¹³⁴ Again, the rebate which is given may apply to specific commodities, as in the case just mentioned, or it may be given upon all freight, as it is under the Mediterranean Westbound Agreement.¹³⁵

¹²⁸ III, 67.

¹²⁹ Exhibit II, *United States of America v. Prince Line*, Petition, p. 27.

¹³⁰ I, 593.

¹³¹ I, 526.

¹³² IV, 143.

¹³³ IV, 174.

¹³⁴ IV, 144.

¹³⁵ III, 65.

The rebate period is commonly six months, though in the Brazilian trade on shipments of coffee to both the United States and Europe the rebates are computed for a period of one year.¹³⁶ Usually, also, the period of deferment is six months. In the trade between the United Kingdom and Puget Sound ports, however, the period of deferment is three months only.¹³⁷ The same is true of shipments of coffee from Brazil to the United States and Europe.¹³⁸

Methods of Meeting Competition.—According to the N. D. L. V. Westbound Freight Agreement, one of the things which the representatives of the lines meet to consider is “measures to be taken to meet competition.” Further, “the fixing of freight rates, even when such go below the fixed minimum freight rates, can be done, viz., for all ports by majority vote, for single ports by consent of all parties.” The agreement also provides that the cancellation of freight rates may take place by majority vote.¹³⁹

In the agreement between the lines in the New York-West Coast of Africa trade is found a clause to the effect that in case of competition the parties shall take joint steps in defense of their interests.¹⁴⁰ Other than these references there is practically nothing in the agreements themselves regarding competition. From the report of Robert P. Skinner, however, we learn of the Syndikats-Rhederei, which is a vessel-owning company with a capital of \$1,428,000. Nominally it is engaged in commercial transportation enterprises, but primarily it is a defensive organization, the capital stock of which is owned by six German companies. Four small and relatively inexpensive ships were purchased. These and such others as may be chartered when necessary are hired out to meet competition and make it unprofitable.¹⁴¹ The report of the Committee on the Merchant Marine and Fisheries in its investigation of shipping combinations abounds with examples of competitive contests which have been carried on by various freight conferences against competitors who have attempted to force their way into the trade.

¹³⁶ I, 16.

¹³⁷ II, 1385.

¹³⁸ I, 15-16.

¹³⁹ I, 593.

¹⁴⁰ II, 1384.

¹⁴¹ III, 53-54.